

### **REMARKS**

Applicants respectfully request reconsideration. Claims 1, 3-5, 8-16, 44, and 49-54 were previously pending in this application. Claims 1 and 44 have been amended. Claims 1, 3-5, 8-16, 44, and 49-54 remain pending for examination with claims 1 and 44 being independent claims. No new matter has been added.

#### **Summary of Telephone Interview with Examiner**

Applicant's representatives Timothy J. Oyer, Reg. No.: 36,628 and Brandon S. Blackwell, Reg. No.: 66,256 (hereinafter "the Undersigned") thank Examiner Catherine Hibbert for the courtesy of a telephone interview conducted on May 27, 2010. Examiner Hibbert, for purposes of examination, is interpreting the phrase "a polymer having a backbone comprising a polyester" to include polymers in which polyester can be present in a side chain. Examiner Hibbert indicated she would favorably consider withdrawing the present rejections if claims 1 and 44 were amended to recite "a polyester backbone" instead of "a backbone comprising a polyester," While the Undersigned did not necessarily agree with Examiner Hibbert's interpretation of the claim language and the cited references, the Undersigned indicated that they might be open to amending the claims in accordance with Examiner Hibbert's suggestion.

Further remarks responsive to each of the bases of rejection are now presented.

#### **Claim Rejections Under 35 U.S.C. §102**

Claims 1, 3-5, 8-16, 44, and 50-53 were rejected under 35 U.S.C. §102(a) and 102(e) as being anticipated by U.S. Patent Publication 2003/0134420 to Lollo et al. (hereinafter, "Lollo").

As noted above, the Office Action has interpreted the phrase, "a polymer having a backbone comprising a polyester" to include a polymer in which the polyester component may be a side-chain or branch or otherwise associated component to any backbone. While, as noted, the Applicants do not necessarily agree with the reasoning in the Office Action, and without acceding to the correctness of the objection, Applicants have amended claims 1 and 44 to recite a polyester backbone rather than a backbone comprising a polyester. Lollo does not disclose the use of a polyester backbone, as recited in amended claims 1 and 44. Therefore, Lollo fails to teach or make

obvious each and every limitation of claims 1 and 44. Because each claim limitation is not taught or made obvious, claim 1 and 44 are patentable over Lollo. Claims 3-5, 8-16, and 50-53 depend from claims 1 and 44, and are therefore patentable for at least the above reasons. Accordingly, Applicants respectfully request withdrawal of the claim rejections on this ground.

#### Claims Rejections Under 35 U.S.C. §103

Claims 1, 3-5, 8-16, 44 and 49-54 were rejected under 35 U.S.C. §103(a) over Lollo in view of Pistel et al. in “Brush-like branched biodegradable polyesters, part III: Protein release from microspheres of poly(vinyl alcohol)-graft-poly(D,L-lactic-co-glycollic acid)” (hereinafter, “Pistel”).

As noted above, claims 1 and 44 have been amended to recite a polyester backbone. Pistel does not teach or make obvious the use of polyester backbones. Rather, Pistel specifically recites PVAL backbones, which are not polyester backbones.

Accordingly, because Pistel does not teach the use of polyester backbones, one would not produce each and every limitation in claims 1 and 44 upon combining the teachings of Pistel and Lollo. Because Pistel fails to cure the deficiencies of Lollo noted above with respect to claims 1 and 44, these claims are patentable over the Lollo and Pistel combination. Claims 3-5, 8-16, and 49-54, which depend from claims 1 and 44, are also patentable for at least these reasons. Accordingly, Applicant respectfully requests withdrawal of the claim rejections on this ground.

#### CONCLUSION

In view of the foregoing, it is believed that the pending application is in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this response, that the application is not in condition for allowance, the Examiner is requested to call the undersigned at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, any necessary extension of time is hereby requested. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 23/2825 under Docket No. S1507.70000US00 from which the undersigned is authorized to draw.

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Respectfully submitted,

By 

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